

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of the)	WT Docket No. 96-6
Commission's Rules To Permit)	
Flexible Service Offerings in the)	
Commercial Mobile Radio Services)	

REPLY COMMENTS OF AMSC SUBSIDIARY CORPORATION

AMSC Subsidiary Corporation ("AMSC"), the licensee of the U.S. Mobile Satellite Service ("MSS") system, hereby submits the following reply comments on the Notice of Proposed Rulemaking ("NPRM") issued in the above-referenced proceeding.^{1/} To the extent that there may be any uncertainty as to the issue, AMSC urges the Commission to clarify that states and local governments are preempted under federal law from regulating the entry of and the rates charged by Commercial Mobile Radio Services ("CMRS") providers using MSS to offer fixed service. Such service would be an ancillary part of the overall provision of MSS and could not serve as a substitute for landline telephone exchange service for a substantial portion of the communications within any state.

Background

Mobile Satellite Service is the first truly ubiquitous two-way telecommunications service available in the United States. For the first time, people living, working or traveling in rural and remote areas too sparsely populated to be served by terrestrial technologies have access to

^{1/} Notice of Proposed Rulemaking, WT Docket No. 96-6, FCC 96-17 (January 25, 1996).

advanced two-way telecommunications services. In addition to its obvious utility for mobile communications, in many sparsely-settled areas MSS may provide the least expensive option for fixed telephone service.

The Commission authorized AMSC in 1989 to construct, launch and operate the first dedicated U.S. MSS system.^{2/} Included within AMSC's license is the authority to provide certain "auxiliary or incidental common carrier services," including fixed satellite services, such as rural telephone and transportable phone service.^{3/} AMSC launched its first satellite on April 7, 1995 from Cape Canaveral, Florida. AMSC's SKYCELL Satellite Telephone Service began in January, 1996. The new system provides mobile voice and data communications services to people who live, work or travel in rural and remote areas of the U.S. unserved by terrestrial technologies. AMSC will provide the full range of land, maritime and aeronautical mobile satellite services, including voice, data and facsimile, throughout the United States, Puerto Rico, the U.S. Virgin Islands, and coastal areas.

AMSC expects its system to serve hundreds of thousands of voice customers. The largest segment of AMSC's market is expected to be mobile users that do not have service in rural and remote areas. Many customers will use a dual-mode phone that will operate on cellular frequencies when the user is within range of a terrestrial system and in the L-band when the user is outside of cellular range, thus allowing uninterrupted service. AMSC estimates that most

^{2/} Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992); aff'd sub nom. Aeronautical Radio, Inc. v. FCC, 983, F.2d 275 (D.C. Cir. 1993). AMSC is regulated as a common carrier. Second Report and Order, 2 FCC Rcd 485, 490 (1987).

In 1994, the Commission included MSS among the services to be classified as CMRS. Second Report and Order, 9 FCC Rcd 1411, 1457-58 (1994).

^{3/} See Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 ¶ 44 (1989).

subscriber terminals will retail for approximately \$2,000. In addition to a monthly access charge of approximately \$25, there will be usage charges that, at the retail level, will range between \$.90 and \$1.49 per minute, depending largely on the terminal's use of power and bandwidth.

Though primarily intended as a mobile service, it has always been expected that MSS also would be used to provide fixed telephone service to households without any telephone service.^{4/} Fixed telephone service will be provided by installing a high-gain L-band transceiver at the user's location, with a standard interface and handset. All outbound calls (from the customer) will be routed through the satellite to the AMSC earth station in Reston, Virginia, and into the public switched telephone network (the "PSTN"). Inbound calls (to the customer) will be routed through the PSTN to the AMSC earth station, to the satellite, and terminate at the customer's location. The fixed service will cost about the same as the Mobile service.

The Commission has preempted state regulation over technical standards, entry and rate regulation of the space segment of MSS.^{5/}

In the NPRM, the Commission states that it initiated this proceeding in order to focus on the extent to which fixed services may be provided by broadband Personal Communications Service, Cellular Radiotelephone Service, and Special Mobile Radio providers. NPRM para. 1. At the same time, the Commission seeks comments on the provision of fixed services by other CMRS providers as well. The Commission also seeks comment on various policy questions relating to the regulatory treatment of CMRS providers offering fixed wireless local loop service.

^{4/} Notice of Proposed Rulemaking ("1985 NPRM"), 50 Fed Reg. 8149 (Feb. 28, 1985), para. 4; AMSC Authorization Order, para. 42. In the 1985 NPRM, the Commission cited one estimate that there were as many as 1.6 million households in rural America without access to basic telephone service. 1985 NPRM, para. 4. AMSC's research indicate that today the number of unserved households may be as high as one million.

^{5/} Second Report and Order, 2 FCC Rcd 485 ¶ 40 (1987).

The Commission proposed to treat fixed wireless local loop services as an integral part of the CMRS services offered by a CMRS provider, so long as the carrier otherwise offers interconnected, for-profit mobile service to the public on licensed CMRS spectrum as provided by the Communications Act. NPRM para. 20.

The comments provide broad support for permitting CMRS providers to offer fixed services. Proponents believe that to do so will produce many benefits for CMRS providers and consumers, including: giving CMRS providers the flexibility to respond to market demand; offering such providers increased operational flexibility; expanding the realm of potential service offerings to consumers; and, promoting competition.^{6/}

The comments are divided, however, on the issue of whether state and local governments should be preempted from regulating the provision of fixed services by CMRS providers.^{7/} The comments are silent concerning the issue of preemption of state regulation of fixed MSS services. As the fixed service which AMSC will offer through MSS will not compete directly with LECs,

^{6/} See, e.g., Comments of Nextel Communications, Inc. at 2; Comments of AirTouch Communications, Inc. and US West NewVector Group, Inc. at 1-2; Comments of the Rural Cellular Association at 2.

^{7/} Those commenters arguing for preemption of state and local regulation of CMRS providers offering fixed wireless local loop service include: Western Wireless Corporation; the Personal Communications Industry Association; the Cellular Telecommunications Industry Association; UTC; Sprint Spectrum; CelPage, Inc.; Bell Atlantic Nynex Mobile, Inc.; and U.S. West.

Those parties arguing against preemption of state regulatory authority support the ability of states to regulate CMRS providers offering fixed wireless local loop services which will directly compete with providers of wireline services, in order to promote technology neutral regulation of local exchange service. See, e.g., Comments of the National Regulatory Utility Commissioners at 4-5; Comments of Pacific Telesis Group at 2-3 (states should retain jurisdiction over fixed wireless substitutes for wireline local loops).

but will primarily supplement local exchange service in high cost and unserved areas instead, AMSC contends that such concerns do not properly apply to AMSC's service.

Discussion

As discussed below, AMSC believes that the Commission should clarify that: (i) MSS facilities may be used to provide fixed services and (ii) state and local governments may not restrict the provision of such service or regulate its rates.

Specifically, AMSC has always understood that as long as a service is designed and primarily used to provide mobile services, that auxiliary services provided by mobile satellite licensees (such as the use of MSS to provide fixed wireless services) are preempted from state entry and rate regulation, pursuant to Section 332 of the Communications Act and Section 253 of the Telecommunications Act of 1996.^{8/} Indeed, no one in this proceeding challenges the preemption of state and local governmental regulation pertaining to such auxiliary services. Therefore, AMSC asks the Commission to make clear that while the Commission's focus concerns entities such as PCS providers which dedicate wireless service to fixed use, nothing in this proceeding affects the continuing preemption of state and local government regulation of auxiliary services provided by mobile satellite licensees, such as fixed mobile satellite services.

MSS facilities may be used to provide fixed services

The Commission has already authorized the use of MSS facilities to provide fixed services. AMSC's authorization includes the authority to provide fixed satellite services over MSS as "auxiliary or incidental common carrier services."^{9/} Further, the Commission has previously found that the provision of such services by AMSC is in the public interest. AMSC seeks to use MSS to

^{8/} See Second Report and Order, 9 FCC Rcd 1411 (1994).

^{9/} See Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 ¶ 44 (1989).

provide unserved and high cost areas with telephone service, which will promote the Commission's goal of universal service. Hundreds of thousands of people live and work in areas not served by traditional wireline telephone services that would benefit from AMSC service.

State governments may not regulate entry or rates of MSS fixed services

Section 332(c)(3) of the Communications Act preempts state and local governments from regulating entry or rates of any commercial mobile service provider, including MSS. The Commission has made clear that mobile satellite services and auxiliary services provided by mobile satellite service licensees constitute "mobile services" within the scope of Section 332.^{10/}

The only exception to the Section 332 preemption that might be relevant is one that permits state commissions to impose requirements on providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. This exception only applies, however, where such services serve as a substitute for land line telephone exchange service for a substantial portion of the communications within the state. 47 U.S.C. 332(c)(3). In the case of MSS, however, the service is not such a substitute. Due to the cost of the service and the capacity limitations of the satellite system, any fixed wireless service that AMSC will provide cannot be characterized as constituting a "substantial portion" of the communications within such State.

Furthermore, given the interstate nature of all MSS traffic, including fixed services, it is not even apparent that the FCC could fairly characterize it as "local loop" service. In particular, virtually all calls go up to the satellite and through the AMSC earth station in Reston, Virginia. No local facilities are involved other than the subscriber terminal. Finally, it does not cost less to make a local call than an interstate call using the AMSC service.

^{10/}

In the alternative, if the Commission finds that fixed services provided via MSS do not constitute auxiliary services provided by mobile service licensees, and thus do not fall within the scope of Section 332(c)(3), state efforts to restrict the provision of these services would be preempted by Section 253 of the Telecommunications Act of 1996. In particular, § 253(a) bars state or local statutes or regulations or other requirements which prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Conclusion

For the reasons stated above, AMSC urges the Commission to issue the requested clarification. A clarification will remove any regulatory uncertainty surrounding the offering of such fixed services, facilitate the use of MSS to bring service to rural areas, and promote the Congressional intent of the 1993 Budget Act and the 1996 Telecommunications Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Elinor W. McCormick, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 25th day of March 1996, I served a true copy of the foregoing **"REPLY COMMENTS OF AMSC SUBSIDIARY CORPORATION"** by first class United States Mail, postage prepaid, upon the following:

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